

**TENNESSEE BOARD OF NURSING  
GROUND FLOOR, CORDELL HULL BUILDING  
CUMBERLAND ROOM  
425 FIFTH AVENUE NORTH  
NASHVILLE, TN 37247-1010**

**MAY 13-14, 2004**

**MINUTES**

Call to Order	E. Cole, Chairman, called the meeting to order at 8:30 a.m. on Thursday, May 13, 2004.
Roll Call/Declaration of a Quorum	The Chairman declared a quorum present.
Members Present	Elizabeth Cole, R.N., Chairman (Thursday) Wilmetta Collie, L.P.N. Ava Morgan, L.P.N. Sheila Jackson Priebel, Public Member Donna Roddy, R.N. Dava Shoffner, R.N. Cheryl Stegbauer, R.N. Barbara Wallace, L.P.N.
Members Absent	Colleen Conway-Welch, R.N., Vice Chairman
Staff Present	Elizabeth Lund, R.N., Executive Director Maxine McKeown, R.N., Nursing Consultant Martha Barr, R.N., Nursing Consultant Richard Russell, Assistant General Counsel Robbie Bell, Director, Health Related Boards Ginger Marlowe, Assistant General Counsel Raney Irwin, Assistant General Counsel Teddy Wilkins, Paralegal
Approval of Minutes	A. Morgan moved and seconded by W. Collie to approve the March 9-10, 2004 minutes as distributed.  7 – Yes Carried
Introduction of Staff	E. Cole introduced the staff present.
Recognition and Welcome to Visitors	E. Cole recognized and welcomed the following guests:

TTC Pulaski Practical Nursing Program  
ETSU Baccalaureate Nursing Program  
Jackson Regional Practical Nursing Program

Executive Director's

E. Lund presented a written and oral report.

Report

A copy is on file.

Health Related Boards Report

R. Bell presented an oral report.

Introduction of Deanna Menesses, Executive  
Director, TNA

E. Cole introduced the new executive director of  
the Tennessee Nurses Association,  
Deanna Menesses.

Bobby D. Reynolds, II  
RN #116362

Administrative Law Judge: Steve Darnell  
Attorney for the State: Laurie Doty  
Respondent: Present

S. Priebel moved and seconded by W. Collie to  
dismiss the case.

7 – Yes  
Carried

Sandra K. Legg  
RN #124656

Administrative Law Judge: Steve Darnell  
Attorney for the State: Raney Irwin  
Respondent: Not present

D. Shoffner moved and seconded by A. Morgan to hold the respondent in default and hear the case today.

7 – Yes  
Carried

W. Collie moved and seconded by A. Morgan to find in the case of Sandra K. Legg the facts alleged in the Notice of Charges true, 10, 11, 12, 13 (a)(b), 14, 15.

7 – Yes  
Carried

W. Collie moved and seconded by A. Morgan to find the causes of action a violation of T.C.A. 63-7-115(a)(1)(C)(F) and Rule 1000-1-.13(a)(b)(d)(r)(t)(u)

6 – Yes  
Carried

W. Collie moved and seconded by A. Morgan to revoke the RN license of Sandra Legg and assess five type A civil penalties totaling \$5,000.00 and assess costs.

7 – Yes  
Carried

It is the policy of the board to protect the health, safety, and welfare of the citizens of Tennessee. The board finds this respondent guilty of incompetence and negligence making the action appropriate.

Michael R. Wiater  
LPN #48643

Administrative Law Judge: Steve Darnell  
Attorney for the State: Raney Irwin  
Respondent: Not present

B. Wallace moved and seconded by A. Morgan to find in the case of Michael Wiater the facts alleged in the notice of charges true, 10, 11, 12, 13, 14, 15, 16, 17, 18.

7 – Yes  
Carried

B. Wallace moved and seconded by A. Morgan to find the causes of action a violation of T.C.A. 63-7-115(a)(1)(C)(D)(F) and Rule 1000-2-.13(1)(b)(f)(g)(u).

7 – Yes  
Carried

B. Wallace moved and seconded by A. Morgan to revoke the LPN license of Michael Wiater, assess three type A civil penalties totaling \$3,000.00 and assess the cost of prosecution.

7 – Yes  
Carried

It is the policy of the board to protect the health, safety, and welfare of the citizens of Tennessee. The board finds this respondent addicted to drugs and unsafe to practice due to that addiction making the board action appropriate.

Lana B. McDowell  
LPN #54554

Administrative Law Judge: Steve Darnell  
Attorney for the State: Ginger Marlowe  
Respondent: Not present and not represented by  
counsel

A. Morgan moved and seconded by W. Collie  
to proceed in default.

7 – Yes  
Carried

S. Priebel moved and seconded by B. Wallace  
to find in the case of Lana B. McDowell the  
facts alleged in the Notice of Charges true, 10-  
11.

7 – Yes  
Carried

S. Priebel moved and seconded by B. Wallace  
to find the causes of action a violation of T.C.A.  
63-7-115(a)(1)(B)(C)(D)(F) and Rule 1000-2-  
.13(u).

7 – Yes  
Carried

S. Priebel moved and seconded by B. Wallace  
to revoke the LPN license #54554 of  
Lana B. McDowell and assess three type C civil  
penalties in the amount of \$1500.00 and assess  
the costs of prosecution.

7 – Yes  
Carried

It is the policy of the board to protect the health,  
safety, and welfare of the citizens of Tennessee.  
The board finds this respondent guilty of  
unprofessional conduct and unfit by her own  
admission making the board's action to revoke  
appropriate.

3:15

Robert Bess  
RN #128162

D. Shoffner recused to hear agreed orders.  
Seven board members present.

Administrative Law Judge: Steve Darnell  
Attorney for the State: Laurie Doty  
Respondent: Not present and not represented by  
counsel

B. Wallace moved and seconded by A. Morgan  
to proceed in default.

6 – Yes  
Carried

B. Wallace moved and seconded by A. Morgan  
to find in the case of Robert Bess the facts  
alleged in the Notice of Charges true, 10-30.

6 – Yes  
Carried

B. Wallace moved and seconded by A. Morgan  
to find the causes of action a violation of T.C.A.  
63-7-115(a)(1)(C)(D)(F) and Rule 1000-1-  
.13(1)(d)(e).

6 – Yes  
Carried

B. Wallace moved and seconded by A. Morgan  
to revoke the RN license #128162 of  
Robert Bess, assess eighteen type A civil  
penalties totaling \$18,000.00 and assess the  
costs of prosecution.

6 – Yes  
Carried

It is the policy of the board to protect the health,  
safety, and welfare of the citizens of Tennessee.  
The board finds this respondent guilty of  
unprofessional conduct by his own admission  
making the board's action to revoke  
appropriate.

3:45

Mary J. Lee  
LPN #49364

D. Shoffner here. Eight board members present.

Administrative Law Judge: Steve Darnell  
Attorney for the State: Laurie Doty  
Respondent: Not present and not represented by counsel

W. Collie moved and seconded by A. Morgan to proceed in default.

6 – Yes  
Carried

A. Morgan moved and seconded by D. Roddy to find in the case of Mary J. Lee the facts alleged in the Notice of Charges true, 10-13.

7 – Yes  
Carried

A. Morgan moved and seconded D. Roddy to find the causes of action a violation of T.C.A. 63-7-115(a)(1)(F) and Rule 1000-2-.13(1)(k).

7 – Yes  
Carried

A. Morgan moved and seconded by W. Collie to revoke the LPN license of Mary J. Lee, assess seventeen type C civil penalties totaling \$1,275.00 and assess the cost of prosecution.

7 – Yes  
Carried

It is the policy of the board to protect the health, safety, and welfare of the citizens of Tennessee. The board finds this respondent guilty of practicing nursing on a lapsed license making the board's action appropriate.



Janice Stewart  
LPN # 49113

Administrative Law Judge: Steve Darnell  
Attorney for the State: Laurie Doty  
Respondent: Not present and not represented by  
counsel

B. Wallace moved and seconded by A. Morgan  
to proceed in default.

7 – Yes  
Carried

D. Roddy moved and seconded by B. Wallace  
to find in the case of facts alleged in the Notice  
of Charges true, 10, 11, 12, 13.

7 – Yes  
Carried

D. Roddy moved and seconded by B. Wallace  
to find the causes of action a violation of T.C.A.  
63-7-115(a)(1)(F) and Rule 1000-2-.13(1)(k).

7 – Yes  
Carried

D. Roddy moved and seconded by B. Wallace  
to revoke the LPN license #49113 of  
Janice E. Stewart and assess 28 type C civil  
penalties in the amount of \$2100. The board  
assesses the cost of prosecution.

7 – Yes  
Carried

It is the policy of the board to protect the health,  
safety, and welfare of the citizens of Tennessee.  
The board finds this respondent guilty of  
practicing nursing on a lapsed license making  
the board's action appropriate.

Nancy Huffman  
LPN # 44265

Administrative Law Judge: Steve Darnell  
Attorney for the State: Ginger Marlowe  
Respondent: Not present and not represented by  
counsel

W. Collie moved and seconded by B. Wallace  
to proceed in default.

7 – Yes  
Carried

D. Shoffner moved and seconded by W. Collie  
to find the facts alleged in the NOC true, 10-12.

7 – Yes  
Carried

D. Shoffner moved and seconded by W. Collie  
to find the causes of action a violation of T.C.A.  
63-7-115(a)(1)(F) and Rule 1000-2-.13(1)(h)(u).

7 – Yes  
Carried

D. Shoffner moved and seconded by W. Collie  
to revoke the LPN license #44265 of  
Nancy M. Huffman, assess five type C civil  
penalties totaling \$2500.00 and assess the court  
of prosecution.

7 – Yes  
Carried

It is the policy of the board to protect the health,  
safety, and welfare of the citizens of Tennessee.  
The board finds this respondent guilty of the  
charges making the board's action of  
appropriate.

Christen M. Johnson  
LPN #48729

Administrative Law Judge: Steve Darnell  
Attorney for the State: Ginger Marlowe  
Respondent: Not present and not represented by  
counsel

B. Wallace moved and seconded by A. Morgan  
to proceed in default.

7 – Yes  
Carried

S. Priebel moved and seconded A. Morgan to  
find in the case of Christen M. Johnson the facts  
alleged in the Notice of Charges true, 10-13  
(amended).

7 – Yes  
Carried

S. Priebel moved and seconded by A. Morgan  
to find the causes of action a violation of T.C.A.  
63-7-115(a)(1)(F)(B) and Rule 1000-2-.13(1)(u)  
and 1000-2-.13(2)(w), 1000-2-.13(5).

7 – Yes  
Carried

S. Priebel moved and seconded by to revoke the  
LPN #48729 of Christen M. Johnson and assess  
three type C civil penalties in the amount of  
\$500.00 each totaling \$1500.00. The board  
assess the cost of prosecution.

7 – Yes  
Carried

It is the policy of the board to protect the health,  
safety, and welfare of the citizens of Tennessee.  
The board finds this respondent has been found  
guilty of a crime and the board's action to  
revoke is appropriate.

Tonya Lynn Kane  
RN # 47429

Administrative Law Judge: Steve Darnell  
Attorney for the State: Ginger Marlowe  
Respondent: Not present and not represented by  
counsel

D. Roddy moved and seconded by W. Collie to  
proceed in default.

7-Yes  
Carried

W. Collie moved and seconded by B. Wallace  
to find in the case of Tonya Lynn Kane the facts  
alleged in the Notice of Charges true, 10-12.

7 – Yes  
Carried

W. Collie moved and seconded by A. Morgan  
to find the causes of action a violation of T.C.A.  
63-7-115(a)(1)(B) and Rule 1000-2-.13(5).

7 – Yes  
Carried

W. Collie moved and seconded by A. Morgan  
to revoke the LPN license #47429 of  
Tonya Lynn Kane, assess two type C civil  
penalties of \$500.00, totaling \$1,000.00 and  
assess the cost of prosecution.

7 – Yes  
Carried

It is the policy of the board to protect the health,  
safety, and welfare of the citizens of Tennessee.  
The board finds this respondent guilty of a  
crime making the board's action appropriate.

Douglas Miller  
RN #53327

Administrative Law Judge: Steve Darnell  
Attorney for the State: Ginger Marlowe  
Respondent: Not present and not represented by  
counsel

D. Roddy moved and seconded by B. Wallace  
to proceed in default.

7-Yes  
Carried

B. Wallace moved and seconded by D. Roddy  
to find in the case of Douglas Miller the facts  
alleged in the Notice of Charges true, 1-8.

7- Yes  
Carried

B. Wallace moved and seconded by D. Roddy  
to find the causes of action a violation of T.C.A.  
63-17-115(a)(1)(F) and Rule 1000-  
2.13(1)(c)(e)(f)(q)(u).

7 – Yes  
Carried

B. Wallace moved and seconded by D. Roddy  
to revoke the LPN license of Douglas Miller  
assess five type A and penalties of \$1,000 each  
totaling \$5,000.00 and assess the cost of  
prosecution.

7- Yes  
Carried

It is the policy of the board to protect the health,  
safety, and welfare of the citizens of Tennessee.  
The board finds this respondent guilty of  
unprofessional conduct making the board's  
action appropriate.

Sherry Jean Martin  
LPN #51872

Administrative Law Judge: Steve Darnell  
Attorney for the State: Raney Irwin  
Respondent: Not present and not represented by  
counsel

B. Wallace moved and seconded by A. Morgan  
to proceed in default.

7 – Yes  
Carried

B. Wallace moved and seconded by A. Morgan  
to find in the case of Sherry J. Martin the facts  
alleged in the Notice of Charges true, 10-15.

7 – Yes  
Carried

B. Wallace moved and seconded by A. Morgan  
to find the causes of action a violation of T.C.A.  
63-7-115(a)(1)(B) and 1000-2-.13(5)(2).

7 – Yes  
Carried

B. Wallace moved and seconded by A. Morgan  
to revoke the LPN license #51872 of  
Sherry Jean Martin and assess five Type C  
penalties in the amount of \$500.00 each,  
totaling \$2,500.00. The board assesses the cost  
of prosecution.

7 – Yes  
Carried

It is the policy of the board to protect the health,  
safety, and welfare of the citizens of Tennessee.  
The board finds this respondent guilty of a  
crime making the board's action to revoke  
appropriate.

Agreed Orders

S. Priebe moved and seconded by C. Stegbauer to adopt the following agreed orders as listed:

	<u>Respondent</u>	<u>Profession</u>	<u>License #</u>	<u>Board Action Agreed Order</u>
1.	Linda Hawkins 140 Valley Crest Drive Florence, AL 35634	RN	127948	05/31/2002 reprimand
2.	Tobie A. Allen 900 Foster Avenue Hamilton, OH 45105	LPN	61632	03/31/2004 revocation
3.	Richard Dwayne Decker 103 M. Coffey Lane Jonesborough, TN 37659	RN	120401	10/31/2004 revocation may reapply in three years
4.	Robbin Marie Kitts 144 Chase Lane Jacksboro, TN 37757	RN	111417	01/31/2005 probation for one year plus continuing education
5.	Susan E. Graham 114 Swift Drive Springville, TN 38256	LPN	51054	06/30/2005 letter of reprimand

7 – Yes  
Carried

Jessica D. Lewis  
RN #66990

S. Priebe moved and seconded by B. Wallace to adopt an agreed order of probation.

7 – Yes  
Carried

Insufficient Funds/Administrative Revocation

B. Wallace moved and seconded by D. Shoffner to revoke the following licenses for non payment of fees.

	Respondent	Profession and License #	Expiration
1.	Georgia E. Dills 806 North Mouse Creek Road Charleston, TN 37310	LPN57880	01/31/2006
2.	Jan Lynette Orga 117 Jefferson Square Nashville, TN 37215	RN72134	01/31/2006

7 – Yes  
Carried

Disciplinary Guidelines

D. Roddy moved and seconded by D. Shoffner  
to adopt the following Disciplinary Guidelines:

### Disciplinary Guidelines

#### S C O P E

S  
E  
V  
E  
R  
I  
T  
Y

	Isolated Incident	Pattern or Multiple Incidents	Widespread Incidents	Significant Incident
<b>Actual Harm or Risk of Immediate Harm</b>	<b>M</b> <b>Cat. 3</b>	<b>N</b> <b>Cat 3, 4</b>	<b>O</b> <b>Cat 3, 4</b>	<b>P</b> <b>Cat 3, 4</b>
<b>Minimal Harm or Potential Harm</b>	<b>I</b> <b>Cat. 2, 3</b>	<b>J</b> <b>Cat. 2, 3, 4</b>	<b>K</b> <b>Cat 3, 4</b>	<b>L</b> <b>Cat 3, 4</b>
<b>No Harm</b>	<b>E</b> <b>Cat. 1, 2</b>	<b>F</b> <b>Cat. 2, 3</b>	<b>G</b> <b>Cat. 2, 3</b>	<b>H</b> <b>Cat. 3, 4</b>
<b>Technical Violations</b>	<b>A</b> <b>Cat. 1</b>	<b>B</b> <b>Cat. 1, 2</b>	<b>C</b> <b>Cat. 1, 2</b>	<b>D</b> <b>Cat. 3, 4</b>



## **Categories of Discipline**

1. Informal resolution, Letter of Concern, Letter of Warning
2. Letter of Reprimand and/or Type C Civil Penalty
3. Probation or Suspension with Remedial Conditions and/or Civil Penalties
4. Revocation and/or Civil Penalties

## **Severity parameters\*:**

- Technical violations:
  - CE violations
  - Advertising violations
  - Fee issues, i.e. fee splitting, rebates, etc.
  - Ambulance chasing
  - Failure to report changes to CRTK
  - Failure to release medical records to patient
  - Practicing without a license (Type A civil penalties allowed)
- No Harm:
  - Practice on Expired License
  - Conviction of a crime not related to practice
  - Allowing the practice of unlicensed personnel
  - Advertising as specialty when unqualified to do so
  - Fraudulent issuance of test results, health certificate, etc.
  - Dirty office/facility
  - Failure to release medical records resulting in delay in treatment, or additional testing
- Minimal Harm or Potential of Harm:
  - Conviction of a felony indirectly related or impacting practice
  - Impairment
  - Practice outside the scope of recognized medicine
  - Unprofessional, dishonorable or unethical conduct
  - Fraudulent issuance of test results, health certificate, etc. or issuance of false test results
  - Over prescribing or inappropriate prescribing of controlled substances
  - Improper dispensing of controlled substances
  - Professional incompetence
  - Falsification of medical records
- Actual or Risk of Immediate Harm:
  - Sexual misconduct
  - Conviction of a crime directly related to practice or crime of moral turpitude
  - Impairment while practicing
  - Unprofessional, dishonorable or unethical conduct
  - Professional incompetence

- Practicing outside the scope of practice
- Use of another's license to perform acts
- Practice outside the scope of recognized medicine
- Fraudulent issuance of test results, health certificate, etc. or issuance of false test results
- Over prescribing or inappropriate prescribing of controlled substances
- Improper dispensing of controlled substances
- Falsification of medical records

\*Violations listed are not all inclusive but only examples of the types of violations that could result in discipline.

**Scope parameters:**

- Isolated means one incident or group of incidents occurring a limited number of times
- Pattern or multiple means a single violation occurring over a period of time, or several violations occurring a limited number of times
- Widespread means an act that is occurring consistently or regularly
- Significant means an incident of gross malpractice, a violation of a Board order, fraud or falsification in the application process, or conviction of a felony involving moral turpitude.

**Diversion to a recognized unprofessional assistance program may be appropriate in situations involving impairment.**

**Costs should be assessed in all successful prosecutions.**

HRB Report

1. RBS – Request For Proposal released
2. Move – Bureau of Licensing and Regulation may move by Christmas 2004.
3. Audiovisual Upgrades – on hold until move, ordered laptops for board rooms.

Election of Officers

D. Roddy nominated Cheryl Stegbauer as chairman. Seconded by A. Morgan.

7 – Yes  
Carried

S. Priebel nominated Donna Roddy as vice chairman. Seconded by B. Wallace.

7 – Yes  
Carried

Recess

5:40 p.m.

Reconvene

The meeting of the Board of Nursing reconvened at 8:30 a.m. on Friday, May 14, 2004.

Open Forum

C. Stegbauer announced an Open Forum:

Tennessee Center for Nursing

Ann Duncan, Executive Director, presented a written and oral report. The report is on file.

Investigations Report

Denise Moran presented an oral report. A written report will follow.

Rules Report

J. Kosten, Rules Coordinator, addressed the board.

Discussion and Roll Call Vote to adopt Rules  
re: Treatment of Pain, Determination of  
Death and Continued Competency

D. Shoffner moved and seconded by D. Roddy  
to accept all changes discussed.

6 – Yes  
Carried

S. Priebel moved and seconded by W. Collie to  
adopt the following rules:

Department of Health  
Rulemaking Hearing Rules  
Board of Nursing  
Division of Health Related Boards

Chapter 1000-1  
Rules and Regulations of Registered Nurses

Chapter 1000-2  
Rules and Regulations of Licensed Practical Nurses

Chapter 1000-4  
Advanced Practice Nurses & Certificates of Fitness to Prescribe

Amendments

Rule 1000-1-.14, Standards of Nursing Competence, is amended by deleting paragraph (3) but not its subparagraphs and substituting instead the following language, and is further amended by deleting parts (3) (b) 6. and (3) (b) 10. in their entirety and substituting instead the following language, and is further amended by deleting subparagraph (3) (d) but not its parts and substituting instead the following language, so that as amended, the new paragraph (3) but not its subparagraphs, the new parts (3) (b) 6. and (3) (b) 10., and the new subparagraph (3) (d) but not its parts shall read:

- (3) All applicants for licensure, renewal of license, reactivation of license, or reinstatement of license must demonstrate competency.
- (3) (b) 6. Having initially obtained or maintained, during the most recent biennial renewal period, certification from a nationally recognized certification body appropriate to practice. This part is required for advanced practice nurses certified pursuant to 1000-4-.03.
- (3) (b) 10. Having successfully completed five (5) contact hours of continuing education / in-service education applicable to the licensee's practice.

- (3) (d) For Registered Nurses who have not practiced for more than (5) years and do not intend to practice in the future, compliance with this subparagraph is not required. For Registered Nurses who have not practiced for more than five (5) years and are applicants for licensure, renewal of license, reactivation of license, or reinstatement of license, the appropriate application and one (1) of the following shall be submitted as evidence of continued nursing competence:

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-7-114, and 63-7-207.

Rule 1000-1-.14, Standards of Nursing Competence, is amended by deleting paragraph (2) in its entirety and renumbering the remaining paragraph accordingly.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-7-114, and 63-7-207.

Rule 1000-1-.15, Scope of Practice, is amended by deleting paragraph (2) in its entirety and substituting instead the following language, so that as amended, the new paragraph (2) shall read:

- (2) Determination and Pronouncement of Death – Pursuant to the restrictions and guidelines found in T.C.A. § 68-3-511, a registered nurse may make an actual determination and pronouncement of death for a resident of a hospice or a nursing home, or for a patient in a hospital, or if the deceased patient was receiving the services of a licensed home care organization at the time of death.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-7-207, 68-3-511, and 68-11-201.

Rule 1000-2-.14, Standards of Nursing Competence, is amended by deleting paragraph (3) but not its subparagraphs and substituting instead the following language, and is further amended by deleting parts (3) (b) 6. and (3) (b) 9. in their entirety and substituting instead the following language, and is further amended by deleting subparagraph (3) (d) but not its parts and substituting instead the following language, so that as amended, the new paragraph (3) but not its subparagraphs, the new parts (3) (b) 6. and (3) (b) 9., and the new subparagraph (3) (d) but not its parts shall read:

- (3) All applicants for licensure, renewal of license, reactivation of license, or reinstatement of license must demonstrate competency.
- (3) (b) 6. Having initially obtained or maintained, during the most recent biennial renewal period, certification from a nationally recognized certification body appropriate to practice.
- (3) (b) 9. Having successfully completed five (5) contact hours of continuing education / in-service education applicable to the licensee's practice.
- (3) (d) For Practical Nurses who have not practiced for more than (5) years and do not intend to practice in the future, compliance with this subparagraph is not required. For Practical Nurses who have not practiced for more than five (5) years and are applicants for licensure,

renewal of license, reactivation of license, or reinstatement of license, the appropriate application and one (1) of the following shall be submitted as evidence of continued nursing competence:

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-7-114, and 63-7-207.

Rule 1000-2-.14, Standards of Nursing Competence, is amended by deleting paragraph (2) in its entirety and renumbering the remaining paragraph accordingly.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-7-114, and 63-7-207.

## New Rule

### Table of Contents

#### 1000-4-.08 Treatment of Pain

1000-4-.08 Treatment of Pain. The purpose of this rule is to recognize that some controlled substances are indispensable for the treatment of pain, and are useful for relieving and controlling many other related symptoms that patients may suffer. It is the position of the Board of Nursing that these drugs may be prescribed for the treatment of pain and other related symptoms after a reasonably based diagnosis has been made, in adequate doses, and for appropriate lengths of time, which in some cases may be as long as the pain or related symptoms persist. The Board recognizes that pain, including intractable pain, and many other related symptoms are subjective complaints and that the appropriateness and the adequacy of drug and dose will vary from individual to individual. The Advanced Practice Nurse, who possesses a certificate of fitness issued by the Board and possesses a Drug Enforcement Administration (DEA) Certificate to Prescribe Controlled Substances, is expected to exercise sound judgment in treating pain and related symptoms with controlled substances.

- (1) Definitions. The following words and terms, as used in this rule shall have the following meanings in the context of providing medications for pain and related symptoms.
  - (a) Abuser of narcotic drugs / controlled substances - A person who takes a drug or drugs for other than legitimate medical purposes.
  - (b) Intractable pain - A pain state in which the cause of the pain cannot be removed or otherwise treated and which in the generally accepted course of medical practice no relief or cure of the cause of the pain is possible or none has been found after reasonable efforts.
  - (c) Non-therapeutic in nature or manner - A medical use or purpose that is not legitimate.



- (d) Prescribing pharmaceuticals or practicing consistent with the public health and welfare - Prescribing pharmaceuticals and practicing Advanced Practice Nursing for a legitimate purpose in the usual course of professional practice.
- (2) An Advanced Practice Nurse who does not choose to provide long-term pain management to patients with intractable pain shall offer the patient a referral to a practitioner whose primary practice is in the treatment of severe, chronic, intractable pain with methods including the use of opiates. If the patient requests such a referral the APN shall assist in the transition to another provider for the purpose of pain management.
- (3) An Advanced Practice Nurse possessing a certificate of fitness issued by the Board and a DEA certificate who provides care for persons with intractable pain with or without opiates is expected to demonstrate current knowledge of long-term pain management.
- (4) Guidelines - The Tennessee Board of Nursing will use the following guidelines to determine whether an Advanced Practice Nurse's conduct violates T.C.A. §63-7-115 (a) (1) (A) through (G) in regard to the prescribing, administering, ordering, or dispensing of pain medications and other drugs necessary to address their side effects.
  - (a) The treatment of pain, including intractable pain, with controlled substances serves a legitimate purpose when done in the usual course of professional practice.
  - (b) An Advanced Practice Nurse duly authorized to practice in Tennessee and to prescribe controlled substances in this state shall not be subject to disciplinary action by the Board for prescribing, ordering, administering, or dispensing controlled substances for the treatment and relief of pain, including intractable pain, in the usual course of professional practice for a legitimate purpose in compliance with applicable state and federal law.
  - (c) Prescribing, ordering, administering, or dispensing controlled substances for pain will be considered to be for a legitimate purpose if based upon accepted scientific knowledge of the treatment of pain, including intractable pain, not in contravention of applicable state or federal law, and if prescribed, ordered, administered, or dispensed in compliance with the following guidelines where appropriate and as is necessary to meet the individual needs of the patient.
    - 1. The record shall include a documented medical history and physical examination by the Advanced Practice Nurse who possesses a certificate of fitness and a DEA certificate to and is providing the medication. Historical data shall include pain history, any pertinent evaluations by another provider, history of and potential for

substance abuse, pertinent coexisting diseases and conditions, psychological functions and the presence of a recognized medical indication for the use of a controlled substance;

2. A written treatment plan tailored for individual needs of the patient shall include objectives such as pain relief and/or improved physical and psychosocial function, and shall consider need for further testing, consultations, referrals, or use of other treatment modalities dependent on patient response;
  3. The Advanced Practice Nurse who possesses a certificate of fitness and a DEA certificate shall discuss the risks and benefits of the use of controlled substances with the patient or guardian;
  4. At each periodic interval in which the Advanced Practice Nurse, who possesses a certificate of fitness and a DEA certificate, and is providing care evaluates the patient for continuation or change of medications, the patient record shall include progress toward reaching treatment objectives, any new information about the etiology of the pain, and an update on the treatment plan.
- (d) In determining the need for any disciplinary action in regard to the Advanced Practice Nurse who possesses a certificate of fitness and a DEA certificate, each case of prescribing for chronic pain will be evaluated on an individual basis as to whether the nurse is prescribing and practicing in a manner consistent with public health and welfare. The Board of Nursing will evaluate for proper documentation, therapeutic prescribing in a manner using drugs that are recognized to be appropriate pharmacologically for the diagnosis, treatment outcomes including improvement in functioning, and recognition that some types of pain cannot be completely relieved.
- (e) Quantity of pharmaceuticals and chronicity of prescribing will be evaluated on the basis of the documented appropriate diagnosis and treatment of the recognized medical indication, documented persistence of the recognized medical indication, and properly documented follow-up evaluation with appropriate continuing care as set out in this rule.
- (f) An Advanced Practice Nurse may use any number of treatment modalities for the treatment of pain, including intractable pain, which are consistent with legitimate medical purposes.
- (g) These rules shall not be construed so as to apply to the treatment of acute pain with controlled substances for purposes of short-term care.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-7-123, 63-7-115, 63-7-126, and 63-7-207.

Legal Contact: Richard Russell, Deputy General Counsel, Office of General Counsel, 26th Floor, William R. Snodgrass Tennessee Tower, 312 Eighth Avenue North, Nashville, TN 37247-0120 615-741-1611.

Contact for disk acquisition and/or party who will approve final copy for publication: Jerry Kosten, Regulations Manager, Division of Health Related Boards, First Floor, Cordell Hull Building, 425 Fifth Avenue North, Nashville, TN 37247-1010 615-532-4397.

Signature of the agency officer or officers directly responsible for proposing and/or drafting these rules:

---

Elizabeth Lund, Executive Director  
Board of Nursing

Board Members	Aye	No	Abstain	Absent
Colleen Conway-Welch, R.N.				X
Elizabeth Cole, RN				X
Donna Roddy, R.N.	X			
Dava Shoffner, R.N.	X			
Cheryl Stegbauer, R.N.	X			
Wilmetta Collie, L.P.N.	X			
Ava Morgan, L.P.N.	X			
Barbara Wallace, L.P.N.	X			
Sheila Jackson-Priebel, J.D.	X			

Further, I certify that the provisions of T.C.A. § 4-5-222 have been fully complied with, that these rules are properly presented for filing, a notice of rulemaking hearing has been filed in the Department of State on the 4th day of September, 2003 and such notice of rulemaking hearing having been published in the October 15<sup>th</sup>, 2003 issue of the Tennessee Administrative Register, and such rulemaking hearing having been conducted pursuant thereto on the 25th day of November, 2003.

Subscribed and sworn to before me this the 14th day of May, 2004.

My commission expires on the 25<sup>th</sup> day of March, 2006.

All rulemaking hearing rules provided for herein have been examined by the Attorney General and Reporter of the State of Tennessee and are approved as to legality pursuant to the provisions of the Administrative Procedures Act, Tennessee Code Annotated, Title 4, Chapter 5.

28

The rulemaking hearing rules set out herein were properly filed in the Department of State on the day of \_\_\_\_\_, 200\_\_\_\_, and will become effective on the\_\_\_\_ day of \_\_\_\_\_, 200\_\_\_\_.

\_\_\_\_\_  
Riley C. Darnell  
Secretary of State

By: \_\_\_\_\_

Discipline Rules

A. Morgan moved and seconded by B. Wallace  
to adopt the following rules as amended:

Department of Health  
Rulemaking Hearing Rules  
Tennessee Board of Nursing  
Division of Health Related Boards

Chapter 1000-1  
Rules and Regulations of Registered Nurses

Chapter 1000-2  
Rules and Regulations of Licensed Practical Nurses

Amendments

Rule 1000-1-.04, Discipline Of Licensees; Unauthorized Practice of Professional Nursing, Civil Penalties, Screening Panels, Subpoenas, Advisory Rulings, Declaratory Orders, and Assessment of Costs, is amended by deleting subparagraph (8) (a) and paragraph (10) in their entirety and substituting instead the following language, so that as amended, the new subparagraph (8) (a) and the new paragraph (10) shall read:

- (8) (a) The licensee shall submit the request to the Board Administrative Office on the form contained in subparagraph (e) providing all the necessary information; and
- (10) Assessment of costs in disciplinary proceedings shall be as set forth in T.C.A. §§ 63-1-144 and 63-7-115.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-1-122, 63-1-144, 63-7-115, 63-7-116, and 63-7-207.

Rule 1000-1-.04, Discipline Of Licensees; Unauthorized Practice of Professional Nursing, Civil Penalties, Screening Panels, Subpoenas, Advisory Rulings, Declaratory Orders, and Assessment of Costs, is amended by adding the following language as new paragraphs (5) and (6) and renumbering the remaining paragraphs accordingly:

- (5) Order of Compliance - This procedure is a necessary adjunct to previously issued disciplinary orders and is available only when a petitioner has completely complied with the provisions of a previously issued disciplinary order, including an unlicensed practice civil penalty order, and wishes or is required to obtain an order reflecting that compliance.
  - (a) The Board will entertain petitions for an Order of Compliance as a supplement to a previously issued order upon strict compliance with the procedures set forth in subparagraph (b) in only the following three (3) circumstances:

1. When the petitioner can prove compliance with all the terms of the previously issued order and is seeking to have an order issued reflecting that compliance; or
2. When the petitioner can prove compliance with all the terms of the previously issued order and is seeking to have an order issued lifting a previously ordered suspension or probation; or
3. When the petitioner can prove compliance with all the terms of the previously issued order and is seeking to have an order issued reinstating a license previously revoked.

(b) Procedures

1. The petitioner shall submit a Petition for Order of Compliance, as contained in subparagraph (c), to the Board's Administrative Office that shall contain all of the following:
  - (i) A copy of the previously issued order; and
  - (ii) A statement of which provision of subparagraph (a) the petitioner is relying upon as a basis for the requested order; and
  - (iii) A copy of all documents that prove compliance with all the terms or conditions of the previously issued order. If proof of compliance requires testimony of an individual(s), including that of the petitioner, the petitioner must submit signed statements from every individual the petitioner intends to rely upon attesting, under oath, to the compliance. The Board's consultant and administrative staff, in their discretion, may require such signed statements to be notarized. No documentation or testimony other than that submitted will be considered in making an initial determination on, or a final order in response to, the petition.
2. The Board authorizes its Executive Director, or any Board member, or any Board consultant, or any Board-appointed designee to make an initial determination on the petition and take one (1) of the following actions:
  - (i) Certify compliance and have the matter scheduled for presentation to the Board as an uncontested matter; or
  - (ii) Deny the petition, after consultation with legal staff, if compliance with all of the provisions of the previous order is not proven and notify the petitioner of what provisions remain to be fulfilled and/or what proof of compliance was either not sufficient or not submitted.

3. If the petition is presented to the Board the petitioner may not submit any additional documentation or testimony other than that contained in the petition as originally submitted.
4. If the Board finds that the petitioner has complied with all the terms of the previous order an Order of Compliance shall be issued.
5. If the petition is denied either initially by the Board's Executive Director, or any Board member, or any Board consultant, or any Board-appointed designee or after presentation to the Board and the petitioner believes compliance with the order has been sufficiently proven the petitioner may, as authorized by law, file a petition for a declaratory order pursuant to the provisions of T.C.A. § 4-5-223 and rule 1200-10-1-.11.

(c) Form Petition

Petition for Order of Compliance  
Board of Nursing

Petitioner's Name: \_\_\_\_\_  
 Petitioner's Mailing Address: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

Petitioner's E-Mail Address: \_\_\_\_\_  
 Telephone Number: \_\_\_\_\_

Attorney for Petitioner: \_\_\_\_\_  
 Attorney's Mailing Address: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

Attorney's E-Mail Address: \_\_\_\_\_  
 Telephone Number: \_\_\_\_\_

The petitioner respectfully represents, as substantiated by the attached documentation, that all provisions of the attached disciplinary order have been complied with and I am respectfully requesting: (circle one)

1. An order issued reflecting that compliance; or
2. An order issued reflecting that compliance and lifting a previously ordered suspension or probation; or
3. An order issued reflecting that compliance and reinstating a license previously revoked.



Note – You must enclose all documents necessary to prove your request including a copy of the original order. If any of the proof you are relying upon to show compliance is the testimony of any individual, including yourself, you must enclose signed statements from every individual you intend to rely upon attesting, under oath, to the compliance. The Board’s Executive Director, or any Board member, or any Board consultant, or any Board-appointed designee, in their discretion, may require such signed statements to be notarized. No documentation or testimony other than that submitted will be considered in making an initial determination on, or a final order in response to, this petition.

Respectfully submitted this the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

---

Petitioner’s Signature

- (6) Order Modifications - This procedure is not intended to allow anyone under a previously issued disciplinary order, including an unlicensed practice civil penalty order, to modify any findings of fact, conclusions of law, or the reasons for the decision contained in the order. It is also not intended to allow a petition for a lesser disciplinary action, or civil penalty other than the one(s) previously ordered. All such provisions of Board orders were subject to reconsideration and appeal under the provisions of the Uniform Administrative Procedures Act (T.C.A. §§ 4-5-301, et seq.). This procedure is not available as a substitute for reconsideration and/or appeal and is only available after all reconsideration and appeal rights have been either exhausted or not timely pursued. It is also not available for those who have accepted and been issued a reprimand.
- (a) The Board will entertain petitions for modification of the disciplinary portion of previously issued orders upon strict compliance with the procedures set forth in subparagraph (b) only:
1. when the petitioner can persuade and demonstrate to the Board that compliance with any one (1) or more of the conditions or terms of the discipline previously ordered should not be required due to circumstances deemed compelling by the Board; or
  2. when the petitioner can prove that compliance with any one (1) or more of the conditions or terms of the discipline previously ordered is impossible. For purposes of this rule the term “impossible” does not mean that compliance is inconvenient for personal, financial, scheduling or other reasons.
- (b) Procedures
1. The petitioner shall submit a written and signed Petition for Order Modification on the form contained in subparagraph (c) to the Board’s Administrative Office that shall contain all of the following:

- (i) A copy of the previously issued order; and
  - (ii) A statement of why the petitioner believes compliance with the order as issued cannot or should not be achieved; and
  - (iii) A copy of all documents that are relevant to meeting the provisions of subparagraph (a). If proof of impossibility of compliance requires testimony of an individual(s), including that of the petitioner, the petitioner must submit signed and notarized statements from every individual the petitioner intends to rely upon attesting, under oath, to the reasons why compliance is impossible. No documentation or testimony other than that submitted will be considered in making an initial determination on, or a final order in response to, the petition.
- 2. The Board authorizes its Executive Director, or any Board member, or any Board consultant, or any Board-appointed designee to make an initial determination on the petition and take one of the following actions:
  - (i) Confirm the petitioner's legitimate difficulties with achieving compliance and forward the petition to the Office of General Counsel for presentation to the Board as an uncontested matter; or
  - (ii) Deny the petition, after consultation with legal staff, if the petitioner's difficulties with achieving compliance are not proven to be legitimate, and notify the petitioner of what was either not sufficient or not submitted.
- 3. If the petition is presented to the Board the petitioner may not submit any additional documentation or testimony other than that contained in the petition as originally submitted.
- 4. If the petition is granted a new order shall be issued reflecting the modifications authorized by the Board that it deemed appropriate and necessary in relation to the violations found in the previous order.
- 5. If the petition is denied either initially by the Board's Executive Director, or any Board member, or any Board consultant, or any Board-appointed designee or after presentation to the Board and the petitioner believes documentation supporting a legitimate inability to achieve compliance with the order has been sufficiently proven the petitioner may, as authorized by law, file a petition for a declaratory order pursuant to the provisions of T.C.A. § 4-5-223 and rule 1200-10-1-.11.

(c) Form Petition

Petition for Order Modification  
Board of Nursing

Petitioner's Name: \_\_\_\_\_  
Petitioner's Mailing Address: \_\_\_\_\_

\_\_\_\_\_  
Petitioner's E-Mail Address: \_\_\_\_\_  
Telephone Number: \_\_\_\_\_

Attorney for Petitioner: \_\_\_\_\_  
Attorney's Mailing Address: \_\_\_\_\_

\_\_\_\_\_  
Attorney's E-Mail Address: \_\_\_\_\_  
Telephone Number: \_\_\_\_\_

The petitioner respectfully represents that for the following reasons, as substantiated by the attached documentation, the identified provisions of the attached disciplinary order cannot or should not continue to be imposed:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Note – You must enclose all documents necessary to prove your request including a copy of the original order. If any of the proof you are relying upon to show impossibility is the testimony of any individual, including yourself, you must enclose signed and notarized statements from every individual you intend to rely upon attesting, under oath, to the reasons why compliance is impossible. No documentation or testimony other than that submitted will be considered in making an initial determination on, or a final order in response to, this petition.

Respectfully submitted this the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Petitioner's Signature

Authority: T.C.A. §§ 4-5-202, 4-5-204, 4-5-217, 4-5-223, 63-1-122, 63-7-115, 63-7-116, and 63-7-207.

Rule 1000-2-.04, Discipline Of Licensees; Unauthorized Practice of Practical Nursing, Civil Penalties, Screening Panels, Subpoenas, Advisory Rulings, Declaratory Orders, and Assessment of Costs, is amended by deleting subparagraph (8) (a) and paragraph (10) in their entirety and substituting instead the following language, so that as amended, the new subparagraph (8) (a) and the new paragraph (10) shall read:

- (8) (a) The licensee shall submit the request to the Board Administrative Office on the form contained in subparagraph (e) providing all the necessary information; and
- (10) Assessment of costs in disciplinary proceedings shall be as set forth in T.C.A. §§ 63-1-144 and 63-7-115.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-1-122, 63-1-144, 63-7-115, 63-7-116, and 63-7-207.

Rule 1000-2-.04, Discipline Of Licensees; Unauthorized Practice of Practical Nursing, Civil Penalties, Screening Panels, Subpoenas, Advisory Rulings, Declaratory Orders, and Assessment of Costs, is amended by adding the following language as new paragraphs (5) and (6) and renumbering the remaining paragraphs accordingly:

- (5) Order of Compliance - This procedure is a necessary adjunct to previously issued disciplinary orders and is available only when a petitioner has completely complied with the provisions of a previously issued disciplinary order, including an unlicensed practice civil penalty order, and wishes or is required to obtain an order reflecting that compliance.
  - (a) The Board will entertain petitions for an Order of Compliance as a supplement to a previously issued order upon strict compliance with the procedures set forth in subparagraph (b) in only the following three (3) circumstances:
    - 1. When the petitioner can prove compliance with all the terms of the previously issued order and is seeking to have an order issued reflecting that compliance; or
    - 2. When the petitioner can prove compliance with all the terms of the previously issued order and is seeking to have an order issued lifting a previously ordered suspension or probation; or
    - 3. When the petitioner can prove compliance with all the terms of the previously issued order and is seeking to have an order issued reinstating a license previously revoked.
  - (b) Procedures

1. The petitioner shall submit a Petition for Order of Compliance, as contained in subparagraph (c), to the Board's Administrative Office that shall contain all of the following:
  - (i) A copy of the previously issued order; and
  - (ii) A statement of which provision of subparagraph (a) the petitioner is relying upon as a basis for the requested order; and
  - (iii) A copy of all documents that prove compliance with all the terms or conditions of the previously issued order. If proof of compliance requires testimony of an individual(s), including that of the petitioner, the petitioner must submit signed statements from every individual the petitioner intends to rely upon attesting, under oath, to the compliance. The Board's Executive Director, or any Board member, or any Board consultant, or any Board-appointed designee, in their discretion, may require such signed statements to be notarized. No documentation or testimony other than that submitted will be considered in making an initial determination on, or a final order in response to, the petition.
2. The Board authorizes its Executive Director, or any Board member, or any Board consultant, or any Board-appointed designee to make an initial determination on the petition and take one of the following actions:
  - (i) Certify compliance and have the matter scheduled for presentation to the Board as an uncontested matter; or
  - (ii) Deny the petition, after consultation with legal staff, if compliance with all of the provisions of the previous order is not proven and notify the petitioner of what provisions remain to be fulfilled and/or what proof of compliance was either not sufficient or not submitted.
3. If the petition is presented to the Board the petitioner may not submit any additional documentation or testimony other than that contained in the petition as originally submitted.
4. If the Board finds that the petitioner has complied with all the terms of the previous order an Order of Compliance shall be issued.
5. If the petition is denied either initially by the Board's Executive Director, or any Board member, or any Board consultant, or any Board-appointed designee or after presentation to the Board and the petitioner believes compliance with the order has been sufficiently proven the petitioner may, as authorized by law, file a petition for a declaratory order pursuant to the provisions of T.C.A. § 4-5-223 and rule 1200-10-1-.11.

(c) Form Petition

Petition for Order of Compliance  
Board of Nursing

Petitioner's Name: \_\_\_\_\_  
Petitioner's Mailing Address: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
Petitioner's E-Mail Address: \_\_\_\_\_  
Telephone Number: \_\_\_\_\_

\_\_\_\_\_  
Attorney for Petitioner: \_\_\_\_\_  
Attorney's Mailing Address: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
Attorney's E-Mail Address: \_\_\_\_\_  
Telephone Number: \_\_\_\_\_

The petitioner respectfully represents, as substantiated by the attached documentation, that all provisions of the attached disciplinary order have been complied with and I am respectfully requesting: (circle one)

1. An order issued reflecting that compliance; or
2. An order issued reflecting that compliance and lifting a previously ordered suspension or probation; or
3. An order issued reflecting that compliance and reinstating a license previously revoked.

Note – You must enclose all documents necessary to prove your request including a copy of the original order. If any of the proof you are relying upon to show compliance is the testimony of any individual, including yourself, you must enclose signed statements from every individual you intend to rely upon attesting, under oath, to the compliance. The Board's Executive Director, or any Board member, or any Board consultant, or any Board-appointed designee, in their discretion, may require such signed statements to be notarized. No documentation or testimony other than that submitted will be considered in making an initial determination on, or a final order in response to, this petition.

Respectfully submitted this the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_

## Petitioner's Signature

- (6) Order Modifications - This procedure is not intended to allow anyone under a previously issued disciplinary order, including an unlicensed practice civil penalty order, to modify any findings of fact, conclusions of law, or the reasons for the decision contained in the order. It is also not intended to allow a petition for a lesser disciplinary action, or civil penalty other than the one(s) previously ordered. All such provisions of Board orders were subject to reconsideration and appeal under the provisions of the Uniform Administrative Procedures Act (T.C.A. §§ 4-5-301, et seq.). This procedure is not available as a substitute for reconsideration and/or appeal and is only available after all reconsideration and appeal rights have been either exhausted or not timely pursued. It is also not available for those who have accepted and been issued a reprimand.
- (a) The Board will entertain petitions for modification of the disciplinary portion of previously issued orders upon strict compliance with the procedures set forth in subparagraph (b) only:
1. when the petitioner can persuade and demonstrate to the Board that compliance with any one (1) or more of the conditions or terms of the discipline previously ordered should not be required due to circumstances deemed compelling by the Board; or
  2. when the petitioner can prove that compliance with any one (1) or more of the conditions or terms of the discipline previously ordered is impossible. For purposes of this rule the term “impossible” does not mean that compliance is inconvenient for personal, financial, scheduling or other reasons.
- (b) Procedures
1. The petitioner shall submit a written and signed Petition for Order Modification on the form contained in subparagraph (c) to the Board's Administrative Office that shall contain all of the following:
    - (i) A copy of the previously issued order; and
    - (ii) A statement of why the petitioner believes compliance with the order as issued cannot or should not be achieved; and
    - (iii) A copy of all documents that are relevant to meeting the provisions of subparagraph (a). If proof of impossibility of compliance requires testimony of an individual(s), including that of the petitioner, the petitioner must submit signed and notarized statements from every individual the petitioner intends to rely upon attesting, under oath, to the reasons why compliance is impossible. No documentation or testimony other than that submitted will be

considered in making an initial determination on, or a final order in response to, the petition.

2. The Board authorizes its Executive Director, or any Board member, or any Board consultant, or any Board-appointed designee to make an initial determination on the petition and take one of the following actions:
  - (i) Confirm the petitioner's legitimate difficulties with achieving compliance and forward the petition to the Office of General Counsel for presentation to the Board as an uncontested matter; or
  - (ii) Deny the petition, after consultation with legal staff, if the petitioner's difficulties with achieving compliance are not proven to be legitimate, and notify the petitioner of what was either not sufficient or not submitted.
6. If the petition is presented to the Board the petitioner may not submit any additional documentation or testimony other than that contained in the petition as originally submitted.
7. If the petition is granted a new order shall be issued reflecting the modifications authorized by the Board that it deemed appropriate and necessary in relation to the violations found in the previous order.
8. If the petition is denied either initially by the Board's Executive Director, or any Board member, or any Board consultant, or any Board-appointed designee or after presentation to the Board and the petitioner believes documentation supporting a legitimate inability to achieve compliance with the order has been sufficiently proven the petitioner may, as authorized by law, file a petition for a declaratory order pursuant to the provisions of T.C.A. § 4-5-223 and rule 1200-10-1-.11.

(c) Form Petition

Petition for Order Modification  
Board of Nursing

Petitioner's Name: \_\_\_\_\_  
Petitioner's Mailing Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Petitioner's E-Mail Address: \_\_\_\_\_  
Telephone Number: \_\_\_\_\_



Attorney for Petitioner: \_\_\_\_\_  
Attorney's Mailing Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attorney's E-Mail Address: \_\_\_\_\_  
Telephone Number: \_\_\_\_\_

The petitioner respectfully represents that for the following reasons, as substantiated by the attached documentation, the identified provisions of the attached disciplinary order cannot or should not continue to be imposed:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Note – You must enclose all documents necessary to prove your request including a copy of the original order. If any of the proof you are relying upon to show impossibility is the testimony of any individual, including yourself, you must enclose signed and notarized statements from every individual you intend to rely upon attesting, under oath, to the reasons why compliance is impossible. No documentation or testimony other than that submitted will be considered in making an initial determination on, or a final order in response to, this petition.

Respectfully submitted this the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

\_\_\_\_\_  
Petitioner's Signature

Authority: T.C.A. §§ 4-5-202, 4-5-204, 4-5-217, 4-5-223, 63-1-122, 63-7-115, 63-7-116, and 63-7-207.

This space left blank intentionally.

Legal Contact: Richard Russell, Deputy General Counsel, Office of General Counsel, 26th Floor, William R. Snodgrass Tennessee Tower, 312 Eighth Avenue North, Nashville, TN 37247-0120 615-741-1611.

Contact for disk acquisition and/or party who will approve final copy for publication: Jerry Kosten, Regulations Manager, Division of Health Related Boards, First Floor, Cordell Hull Building, 425 Fifth Avenue North, Nashville, TN 37247-1010 615-532-4397.

Signature of the agency officer or officers directly responsible for proposing and/or drafting these rules:

---

Elizabeth Lund, Executive Director  
Board of Nursing

The roll call vote by the Board of Nursing on these rulemaking hearing rules was as follows:

Board Members	Aye	No	Abstain	Absent
Colleen Conway-Welch, R.N.				X
Elizabeth Cole, RN				X
Donna Roddy, R.N.	X			
Dava Shoffner, R.N.	X			
Cheryl Stegbauer, R.N.	X			
Wilmetta Collie, L.P.N.	X			
Ava Morgan, L.P.N.	X			
Barbara Wallace, L.P.N.	X			
Sheila Jackson-Priebel, J.D.	X			

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Board of Nursing on the 14th day of May, 2004.

Further, I certify that the provisions of T.C.A. § 4-5-222 have been fully complied with, that these rules are properly presented for filing, a notice of rulemaking hearing has been filed in the Department of State on the 29th day of October, 2003 and such notice of rulemaking hearing having been published in the November 14th, 2003 issue of the Tennessee Administrative Register, and such rulemaking hearing having been conducted pursuant thereto on the 23rd day of December, 2003.

\_\_\_\_\_  
Robbie H. Bell, Director  
Health Related Boards

Subscribed and sworn to before me this the 14th day of May, 2004.

\_\_\_\_\_  
Notary Public

My commission expires on the 25<sup>th</sup> day of March, 2006.

All rulemaking hearing rules provided for herein have been examined by the Attorney General and Reporter of the State of Tennessee and are approved as to legality pursuant to the provisions of the Administrative Procedures Act, Tennessee Code Annotated, Title 4, Chapter 5.

\_\_\_\_\_  
Paul G. Summers  
Attorney General and Reporter

The rulemaking hearing rules set out herein were properly filed in the Department of State on the day of \_\_\_\_\_, 200\_\_\_\_, and will become effective on the\_\_\_\_ day of \_\_\_\_\_, 200\_\_\_\_.

\_\_\_\_\_  
Riley C. Darnell  
Secretary of State

By: \_\_\_\_\_

Vote to Hold a Rulemaking Hearing re: Prerequisite to Prescribing, Further Define Unprofessional Conduct and Housekeeping Change to School Rules

S. Priebel moved and seconded by B. Wallace to authorize a rulemaking hearing re: prerequisite to prescribing, further define unprofessional conduct and housekeeping changes to school rules.

6 – Yes  
Carried

Approval of Professional Program

D. Shoffner moved and seconded by B. Wallace to add the University of Tennessee Health Sciences Center to the approved school list.

6 – Yes  
1 – abstain (Stegbauer)  
Carried

8:45

D. Roddy excused. Six members present.

TNPAP Report

Leanne Busby, Director, presented a written and oral report.

S. Priebel moved and A. Morgan seconded that TNPAP has the authority to refuse to contract with any client who uses an attorney.

6 – Yes  
Carried

Announcement of Resignation  
Leanne Busby, Director, TNPAP

Leanne Busby announced her resignation.

A. Morgan expressed the board's appreciation to Leanne Busby for a wonderful job, clarified that the offer of a bonus was the board's idea and noted that to suggest otherwise is inappropriate.

Vote to Decide Whether to Hear Petition of Dorothy King and Patricia Battle

S. Priebel moved and seconded by W. Collie to hear the petition at a future meeting.

5 – Yes  
Carried

The board appointed a task force to assist OGC in preparing for the petition for declaratory order re: issuing drugs

Dava Shoffner  
Sheila Priebel  
Cheryl Stegbauer  
Richard Russell

Monitoring and Managing Anesthesia in an Oral Surgeon's Office

Dr. Bob Roddy, Anesthesia Consultant to Dental Board and Dr. Carter, Dental Board provided information for the board to consider and volunteered to participate on the Conscious Sedation Task Force.

Investigations Report

Denise Moran, Director, presented a written and oral report.  
435 Complaints = 2003  
48% increase in overall complaints since 2000 for all HRB

Tennessee Center for Nursing

Ann Duncan, Director, presented a written report. Report on file. Highlights include:

1. Statewide education conference – contract with Vanderbilt
2. Institute for Nursing Excellence – contract with UT
3. Model Articulation Plan – pilot testing plans in progress
4. Proposal to Double Nursing Enrollment by 2010 – THA awarded TCN \$11,000 grant

D. Shoffner moved and seconded by B. Wallace to extend the following exemption in the board policy relative to experience (#1) and course of study (#8) such that the policy reads as follows:

TENNESSEE BOARD OF NURSING  
AMENDED POSITION RE INTRAVENOUS THERAPY AND  
THE LICENSED PRACTICAL NURSE

The Board of Nursing interprets its practice act and rules to support certain licensed practical nurse's ability to deliver selected intravenous push medications under the delegation of a registered nurse within the following conditions and exclusions:

1. The licensed practical nurse must have a minimum of three years experience as a licensed nurse.
2. The licensed practical nurse practices under the supervision (defined as "overseeing with authority") of the registered nurse who maintains accountability for that delegation. The licensed practical nurse is accountable for his/her acts.
3. The licensed practical nurse may administer IV push medications in peripheral lines only.
4. Competency must be demonstrated to the chief nursing officer.
5. Documentation of competence must be maintained in the LPNs personnel file, signed and attested to by the facility's chief nursing officer.
6. LPNs may administer IV push medications to adults weighing over 80 pounds.
7. LPNs may not administer IV push medications to pediatric or obstetrical patients.
8. It is the intent of the board to set a requirement for the LPN to complete a standardized course of study developed from the Infusion Nurse Society Standards. Until such course is approved by the Board of Nursing, an LPN holding a current license to practice and having practiced nursing at least two years and having successfully completed a formal (institutional/agency-based) IV therapy training and competency program is exempt from both the three year experience requirement (#1) and the standardized course of study requirement (#8).

In respect to intravenous therapy in general, LPNs may not administer the following fluids/medication/agents or drug classifications:

1. Chemotherapy
2. Serums
3. Oxytocics
4. Tocolytics
5. Thrombolytics
6. Blood or blood products
7. Titrated medications
8. Moderate sedation

9. Anesthetics
10. Paralytics
11. Investigative or experimental drugs

5 – Yes  
Carried

#### Conscious Sedation

The chairman appointed Dava Shoffner to the Conscious Sedation task force to serve as chairman. The chair requested a final summary from the task force. R. Russell shared with the board a letter from Jeffrey L. Levy, TANA attorney, requesting recusal of Colleen Conway-Welch from involvement in rulemaking/policy-making process regarding conscious sedation. C. Conway-Welch's position is that there is no conflict of interest.

1:55

A. Morgan absent. B. Wallace absent. Four members present.

#### Screening Panel Recommendations

S. Priebel moved and seconded by W. Collie to ratify the following agreed orders from screening panels:

1.	Juanita Vise	LPN 3701	02/28/2005
2.	Susan Clark	RN 102213	11/30/2004
3.	Mary Griggs	LPN 29393	06/30/2004
4.	Wanda Hunt	LPN 61260	08/31/2005
5.	Melvin Speies	RN 102107	02/28/2006
6.	Stephanie Tipton	RN 74668 Certificate of Fitness #472	10/31/2005

5 – Yes (A. Morgan via speaker phone)  
Carried

#### Deanna Menesses Update on TNPAP Director Search

D. Menesses gave an oral report on the research for a TNPAP director. The board discussed transition issues and requested TNA/TNF to submit to the board a plan for transition. Cheryl Stegbauer spoke to the need for TNA to hire an



external consultant to review the management structure of TNF/TNPAP to ensure success of the program.

School Announcement

New Dean: Dr. Ann Plumb, Baptist Memorial School of Nursing

Adjournment

2:50 p.m.

---

Elizabeth Cole, RN  
Chairman (May 13, 2004)

---

Date

---

Cheryl Stegbauer PhD, RN  
Chairman (May 14, 2004)

---

Date

---

Elizabeth J. Lund  
Executive Director

---

Date

EL/G3034141/BNmins.